

A comparative study on the views of civil law and Islamic Jurisprudence about time share

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Abstract: *It is essential that Islamic jurisprudence and law be always respondent to people's everyday problems. Time share is a recently current phenomenon which many different law and jurisprudence schools have examined and proposed solutions to. Therefore, this study aims at answering the following questions while examining the historical root of this phenomenon, its different types, and for and against ideas of Sunni and Shiite jurisconsults as well as Iranian lawyers:*

1. *Which of these ideas provides the most vigorous scientific support?*
2. *Does common law has any effect on accepting this type of dealing?*
3. *Is there any reliable solution to resolve the current situation?*

Keyword: *Time Share; Ownership; Temporary Ownership; Periodical Ownership; Intermittent Ownership*

INTRODUCTION

One of the modern phenomena, which has many civil and social impacts and attracted many people in a short period, is what is called time share or temporary and intermittent ownership. Although some have reduced it to a technique, it can be accepted as a phenomenon by itself through precise examination. Due to its newness and its different civil law and Islamic jurisprudential aspects, this study aims to critically examine time share regarding its background and different dimensions and the views of civil and Islamic laws about it in order to present civil and Islamic jurisprudential solutions for its correct use in people's lives.

Statement of the problem

Are there any clear and definite background, definition, instructions and impacts for time share which distinguish it from other Islamic contracts?

Are there any similar contracts in civil and Islamic law whose credibility and validity have been affirmed?

Is temporary ownership, as the basis of time share, accepted in civil and Islamic law? If it is not accepted, is there any other suggestions to solve the problem and answer people's questions?

Can time share be included as one of the definite contracts (both civil and jurisprudential) so that its validity and credibility can be verified based on the principles and premises of that contract?

If there is no such definite contract, is there any other way to validate time share?

What suggestions can be made to solve this problem? What actions must be taken?

Defining time share

Literarily, time share means having a share or involvement in a specified time; however, technically, it means using and profiting from a property which the owners have a timetable to use (Shariati, 1388/2009,

p. 23). In Black's Law Dictionary, time sharing has been defined as a "A form of shared property ownership, commonly in vacation or recreation condominium property, in which rights vest in several owners to use property for a specified period each year (e.g. two weeks each year) (Black's Law dictionary, p.1483).

In Curzon's Dictionary of Law, time share refers to the ownership of any residential house in Britain and other areas which its tangible whole or part of it can be used by joint owners all of them have the temporal and intermittent right to use the house for recreational purposes (Golkarian, 1384/2005, p. 878).

It is possible to propose a deeper conceptualization of time ownership as follows: in this kind of ownership, several people (each for a specified time in a definite or flexible order) buy and share a property in order to profit from it and use it privately as owner (Hoseini, 1387/2008, p. 5).

Terms used to define time share

In Iran: time ownership, time share, intermittent ownership, turn ownership, time sharing, commonage ownership, shared ownership, time involvement, etc;

In Arabic countries: time sale, time ownership contract, time involvement;

In English: time sharing, time sharing of immovable properties;

In France: Temps partial de biens immobiliers; (Hoseini, 1387/2008, p. 4).

The phrase *beiy zamani* (time share) in Persian

The phrase *beiy zamani* (time share) is a self-devised one which is utilized without taking into account the nature of time share and merely for the purpose of marketing and attracting customers. In essence, using the word *beiy* (sale) is not correct for time share. Since time share is a recent phenomenon, there is no trace of it in Iranian references. However, regarding its nature, time share can be used in two senses:

1. Time share is confined to a specified time, which is cancelled after due time like in *mohāyāt* (division of profits from a condominium or common property).
2. Time share is a kind of ownership in which each of the owners possesses the tangible property in a specified time.

In this study, the second sense of the term is intended.

Time share: Impacts and premises

A) Bases and effects of time share

Time share has a number of specific features:

A1) The main attribute of this contract is the transfer of ownership from the owner to another person. Therefore, it can be included amongst ownership contracts.

A2) The ownership of the tangible property is assigned to another person and all the profits of the property are also transferred. The difference in the ownership distinguishes it from a leasing (renting) contract.

A3) The tangible property is transferred to several people; however, all of them cannot possess the tangible property simultaneously; rather, at a given time, only one person can own the property and this feature distinguishes time share from commonage sale or a condominium.

A4) The ownership of each individual is temporary and limited, and the property is not owned by any of the owners (confined to two time limits)

A5) It is a necessary, transferable and ownership contract; however, the sale is specified and ownership is permanent (Tabatabai, 1392/2013, p. 35; Shariati, 1387/2008, p. 19).

B) The principles of time share

B1) In this contract, the property is never without an owner; however, it cannot be assumed as a commonage because only one person is the owner at a time. The relationship between the owners is similar to that in dedication (*vaqf*) (Ansari, 1378/1999, p. 168). However, some thinkers like Mohaqeq Isfahani have rejected this idea by asserting that “there is no devised right for the non-existent (owners) in Islamic law” (Tabatabai, 1387/2008, p. 19). Time ownership is of this kind; however, the relationship of other owners with the tangible property cannot be regarded as interrupted. This weak relationship, though is not a possessory ownership, limits the domain of the temporary owner’s authorities and choices (Shariati, 1388/2009, p. 23; Novin, 1386/2007, p. 46). In other words, for the other types of dedication, it is possible to imagine the nonexistence of ownership; however, a kind of ownership remains in time share definitely.

B2) The domain of the owners’ authorities

The most important impact of ownership is the authority to possess the property (free profiting). If the owner is one person, the domain of the authorities is very vast; however, if there are more than one owner, the authorities of the owners will be limited both horizontally (the commonage of ownership) and vertically (time sale). According to the first dimension (the commonage of ownership), every owner has the right to possess the property (transfer, gift, etc) at any time, and according to the second (time sale), every owner has the right for any kind of possession but there is no possessory ownership. This right can be verified by the principle of Dominance (Taslit); however, if the possession of one owner creates loss for the other owners, the principle of “No Loss” prevents dominance and limits the authority of that owner (Civil Law Article No. 132 states this too). Since, according to many jurists, the Principle of Dominance is a rational principle before being a religious one that Islam has verified it, wise and rational people would acknowledge the right of ownership, but at same time, they do not allow the loss of other people (Makarem, 1387/2008, p. 29).

Different types of time share

1) Ownership in time share

Every individual has a lifelong ownership over the property for a specified time (e.g. one week in a year). This ownership is transferable to others and inherited by the heirs. In the United States, this kind of time share has a formal deed, but the authorities of the owner is not complete.

2) Rental time share

Based on the time mentioned in the contract (for example 6 years), the owner has the right to use the property (for example one week in a year). The contract is made for a short period of time (e.g. 6 years); however, for longer periods of time (e.g. 60 or 90 years), a formal deed must be issued.

3) Time share based on the right to profit

In this case, there is no ownership right and, though it is similar to a leasing (rental) contract, it has its own principles which are based on both parties agreement. Its time can be determined based on a reservation method and needs no particular unit.

4) Time share based on membership in a club or particular places’ systems

In time share, there is no right like those in a usufruct or a particular right for using and profiting. Every individual has the right to use the facilities and equipments based on a reservation system in return of paying the membership fee. In this category, it is possible that different clubs coordinate with each other and provide their members the possibility of using the facilities of other clubs.

With these explanations, some lawmakers believe that time share is not a unified contract, but rather a collection of different contracts which are utilized to meet certain needs. They argue that there is no need

to devise new legal and civil entries if already existing entries are defined carefully and precisely (Fadavi & Soleimani, 1387/2008, p. 103; Taqizadeh Ansari, 1385/2005, p. 156).

Benefits of time share:

- A) All necessary facilities and equipments are available in these places.
- B) The total price is less than other accommodations (more facilities, less expenses).
- C) It prevents the capital recession and entailment.
- D) It prevents extra expenses like maintenance, preparation, protection, etc.
- E) It is possible to transfer the property to others and receive rent.
- F) The added value of the property belongs to the buyer.
- G) The seller is able to sell his property more than its real value.
- H) It helps the construction industry, the development of tourism and the creation of new jobs.

Disadvantages of time share

This kind of contract has its own problems which are taken into account in its new versions:

- A) The owner must pay the current costs whether to use the property or not.
- B) The facilities are limited to a particular area.
- C) It is possible that the advertisements are fabricated and there are no legal ways to defend people's rights.

The products of time share

The products of time share are flexible (floating) weeks, fixed weeks, a club system based on point or credit, partial ownership (5 to 26 weeks), partitioned units, two half-weeks, biennial ownership, etc. All these show the aim of attracting different customers with different tastes and financial capabilities (Fadavi, 1387/2008, p. 103; Taghizadeh & Ansari, 1385/2006, p. 156; Kazemi Najafabadi, 1387/2008; p. 130).

Examining similar ways to time share in civil law and jurisprudence

One of the questions about any new phenomenon is to ask whether there have been any similar cases in law and jurisprudence or not.

A) The concept of *mohāyāt*

Mohāyāt refers to the division of common properties (regarding time and place), which is confirmed by the Civil Law Article No. 587 as well as by civil and jurisprudential texts. However, time share, as was explained above, is a temporary ownership. There are some clear differences between time share and *mohāyāt*:

1. In *mohāyāt*, the property is jointly owned, while in time share every person involved has full ownership.
2. In *mohāyāt*, all parties in the contract are the owners of the property while in time share one person is seller and another is the buyer.
3. Eminent jurists and lawyers regard *mohāyāt* as valid and revocable while time share is an essential contract.

4. The main element in *mohāyāt* is dividing the profit and in fact, it is a kind of reconciliation in cases of dispute and argument which is performed with the aim of bestowing the benefits of joint properties, while in time share the main element is ownership and owning the tangible property.
5. It is not possible to transfer *mohāyāt* or rent them while in time share there is no problem in this regard unless it has been conditioned in the contract.
6. In *mohāyāt*, there is nothing as price (*saman*), but in time share there is always a price in return of the sale. (Vahdani, 1388/2009, p. 120; Novin, 1386/2007, p. 46; Binai, 1387/2008, p. 104)

B) Intervenient exchange (*badal heilooleh*)

Intervenient exchange is the compensation paid to the owner of some seized property until the excuse for its return exists or the return of the seized property is possible. Some jurists believe that the ownership of the property is confirmed in intervenient exchange and others have agreed that this kind of ownership exists until the property can be returned to its owner (i.e. the ownership is temporary) (Toosi, 1404 H.Q., p. 413; Shahid Sani, 1414 H.Q. p. 201; Heli, 1411 H.Q. p. 486).

Some believe that permitting the capture of property by the owner only creates intervenient exchange and not temporal ownership (Shahid Sani, 1414 H.Q., p. 413). Naini accepts the temporal ownership and believes that the owner can possess the pledge until the tangible property is returned to him (in this case, there is an obvious disagreement among jurists; nevertheless, according to some jurists, the existence of temporary ownership is clear here but it depends on the next action of the seizer (either the seizer returns the tangible property and takes the pledge back or he never refers back to the owner). As a result, intervenient exchange is completely different from time ownership wherein everything is specified.

C) Corporations (*Sherkat Sahāmi*)

This is the case when several people start a corporation in order to buy properties (for example estates) and benefit from the corporation's properties jointly. In this case, the corporation is a legal entity and the purchased properties belong to the corporation and its members. If the members have agreed to use it for a specified time, it is a kind of *mohāyāt* (which was discussed earlier) and is not a matter of commonage of ownership. The priority of this way is that the share holders are able to exchange their shares with similar ones in other corporations or transfer it to others without any need for the transfer or exchange of the whole corporation or its benefits (Shariati, 1388/2009, p. 44).

D) Time partitioning (*Afrāz Zamāni*)

The simplest and commonest way of dividing joint property is that the property is divided equally among the copartners (Katozian, 1374/1995, p. 25). This way, the joint property is divided by a unit of time (day, hour, etc); for example, in the case of dividing the water in a shared stream or subterranean (Ashrafi, 1386/2007, p. 35; Tabatabai, 1387/2008, p. 22). Time partitioning is due in divisible properties which cannot be divided equally and could not be divided through partitioning (shares). According to the Article No. 317 of the Non-Litigious Matters Legislation, it is possible to solve these problems by selling the property. About estates, place partition is a matter but time partitions is also possible. For example, if a house has four owners and it is not possible to divide the house, it can be divided into four seasons through time partitioning. Lawyers regard time partitioning as a way to preserve the commonage and to provide all share holders the possibility of benefiting from the joint property without any need to divide the whole property (Langroudi, 1349/1972, p. 2; Katouzian, 1374/1995, p. 139). The case of time partitioning can be considered in time sharing when share holders accept the time ownership; otherwise, it does not help the present discussion.

E) Reconciliation of profits (*Solhe Manāfe*)

In this case, the owner does not transfer the ownership, but rather transfers the profits of the tangible property to a number of people through a reconciliation contract (Shariati, 1388/2009, p. 38). This contract has been utilized in recent years. For example, in 1375 (1996), a company called *Narenjestan Zibaye Shomal* acted based on a reconciliation of profits to people (they became the owners of the profits). This contract has no civil or jurisprudential problem, but its execution puts the benefits of the involved people

into danger for two reasons: first, the buyer has no right over the main property and this is the point which makes it different from time sharing, and second, if the owner creates any changes in his property which endangers the profits of the other parties, they will have no right to object this and it has not been acknowledged in law (Shariati, 1388/2009, p. 38).

Islam's views about temporary ownership

In order to state this problem, it is necessary to clarify the meaning of ownership in Islamic jurisprudence. It is a widespread discussion; however, some points need to be stated in order to reach a conclusion regarding temporary ownership and time share.

An instance of temporary ownership in jurisprudence: Dedication

A) The most important jurisprudential entry wherein temporal ownership has been accepted is in dedication (*vaqf*). Although some ulema have denied it, according to the sayings of most eminent jurists, the ownership of the dedicated is transferred to the other party and the result is the ownership of the tangible property by the new owner. Some have rejected the transfer of the dedicated property and consider it as the redemption of the property or its dedication to God (Malek, ?, p. 937). From Sunni jurists, only *Hanabale* have accepted the alienation of dedicated property (Ibn-Qodame, 1266 H.Q., p. 189).

The first and the most obvious proof and verification of temporary ownership in dedication is when the dedicator clearly obliges himself to a specified time (e.g. I dedicate this for one year). Most jurists reject this type of dedication and others believe that this is entailment not dedication (Toosi, 1378/1999, p. 548; Shahid Sani 1414 H.Q., p. 353; Najafi, 1362/1984, p. 51; Khomeini, 1375/996, p. 65; Khoui, 1410 H.Q., p. 234).

Only Seyyed Yazdi, in *Takmele Orveh*, Behbahani and some Sunni ulema (e.g. Abu Zakaria, 1412 H.Q., p. 391) have accepted dedication in this way (but most eminent ulema disagree and it could not be used to interpret time share).

Three statements exist about dedication without revocation:

1. Famous ulema believe in the validity of dedication (Toosi, 1378/1999, p. 292; Helli, 1403 H.Q., p. 448; 1374/1995, p. 302; Shahid Sani 1414 H.Q., p. 354; Khomeini, 1375/996, p. 65; Khoui, 1410 H.Q., p. 235).
2. The second statement is its total rejection (Najafi, 1412 H.Q., p. 54; Bahrani, ?, p. 136).
3. The third statement verifies its validity; however, they believe in the entailment (*habs*) of property not dedication (Shahid sani, 1410 H.Q., p. 169; Mirzaye Qomi, 1231 H.Q., p. 78).

Sunni jurists have also three interpretations in this regard: validity, rejection, and a detailed statement (Emami, 1389/2010, p. 84).

The first person who has argued in the issue of temporary ownership (in dedication) is Alame Helli. Before him, this issue has not been discussed in jurisprudential texts. He believes that dedication is a kind of ownership and alms (charity); as a result, it must be under the owner's will in dedicating it or not (Helli, 1374/1995, p. 302). In *Tazkere*, he asserts that, "dedication is a kind of charity and ownership, so it is determined according to the owner's will in the dedicated time." (*Masalek*, p. 354; *Izah-ah- Favaed*, p. 379). This statement shows that Alame Helli has accepted the temporal ownership. However, some ulema have rejected dedication for this same reason (temporal ownership) and explicitly assert that ownership cannot be temporal (Mohaghegh Karki, ?, p. 15) and that wisdom cannot accept ownership which is limited in time (Bahrani, ?, p. 138).

Najafi (famous as *Saheb Javaher*) also rejects this issue in dedication which is a kind of whole ownership, but accepts it in entailment and usufruct (life-estate, and the right for a prescribed period which is the ownership of the profits) (Najafi, ?, p. 57). Seyyed Yazdi in *Molhaghat Orve* asserts that dedication without revocation is acceptable because dedication means bestowment not ownership (p. 195).

It should be noted that, although Alame Helli is the first who discusses this issue, it can be recognized by considering his ideas that he did not accept temporary ownership except in particular cases like dedication (Emami, 1389/2010, p. 85). It can be concluded that the concept of dedication and its being time-limited is stated by a particular group of ulema and, as a result, cannot be justified according to credible references.

- B) Some Ulema have verified dedication to particular people by a specified and then permanently manner (e.g. to the poor) (*Izah-Al-Favaed*, p. 384; Helli, ?, 434; Najafi, ?, p. 61). Of course, Allame Helli has questioned its validity in *Qavaed* (Helli, 1413 H.Q., p. 390).
- C) **Dedication in different texts:** some jurisprudents like Mohaqeq Naini have accepted the ownership in dedication as an instance of temporal ownership. Stating that temporary ownership does not exist in Islam is not acceptable because there is no reason against it except in sale. In sale, the jurisprudents' consensus is on rejecting temporary ownership (Naini, ?, p. 331). Overall, Mohaqeq Naini has rejected temporary sale and has accepted temporary ownership in other cases.

In conclusion, the different ideas and disagreements among ulema are clear in this issue. Some have accepted temporary ownership in dedication while others have rejected this kind of dedication because they do not agree with temporary ownership. There is an obvious difference between temporary ownership and time-limited dedication. Even if we assume the validity of dedication for one year, this does not guarantee the temporal owners any possessive right over the property after one year. However, in time share, it must be accepted that there is a kind of ownership in the following periods. This is the case in life-estate dedication too.

Position of time share in contracts

Another question which must be dealt with is whether time share has any place in formal contracts. In general, contracts are divided into two categories of definite and indefinite.

1. Definite contracts

These contracts are stated clearly in civil and jurisprudential laws and have detailed principles and premises, like leasing, sale, loan, etc. (Katouzian, 1392/2013, p. 1). Before examining different contracts, some points need to be clarified. Definite contracts are divided into two types of ownership and agreement, and based on their economic objectives are categorized as reciprocal (like sale and leasing) and unilateral (like gift or donation, borrowing). Ownership contracts can be divided into two groups: contracts through which the tangible property is alienated (like sale and borrowing) and those in which profits or the right of profiting is transferred (like leasing) (Katouzian, 1392/2013, p. 75).

Since time share is a kind of timetabled transfer, it is similar to reciprocal and ownership contracts regarding its nature and impacts. Accordingly, of definite contracts, three contracts which can be classified as ownership and reciprocal include sale, exchange, and loan (as a matter of fact, reconciliation can be regarded as the mother of all contracts as all contracts are a form of reconciliation).

Moreover, from among definite contracts, leasing is out of question here because:

1. Leasing is the ownership of the profits and not the tangible property (Khomeini, 1408 H.Q. p. 570).
2. In leasing, a condition is the temporality of profit ownership (Emami, ?, p. 59; Shahid Sani, 1414 H.Q. , p. 1; 1365/1987, p. 1). Similarly, in usufruct in dedication and entailment, it is the ownership of the profits which is stated and not the ownership of the whole property (Khomeini, 1408 H.Q. p. 87).

Loan, as a definite contract, is out of the scope of this discussion because loan is the ownership of property in return of its equivalence or, if not possible, its price. Therefore, time share is not a kind of loan and has no similarity to it. Imam Khomeini (1408 H.Q., p. 623) defines loan as "the ownership of another person's property in return of a pledge to bring back the property itself or its equivalence or price."

After this introduction, some examples of definite contracts are provided.

A) Partnership contracts (*aqd sherkat*)

These are among definite contracts which involve the commonage of ownership right (Katouzian, 1379/2000, p. 6; The Civil Law Article No. 571). It can be obligatory or optional (Civil Law Article No. 572; Khomeini, 1408 H.Q., p. 623). In addition, sometimes the tangible property is the subject of partnership contract and sometimes the right itself as in the right of option (*khayār*), survivorship (*shafae*),... (Broujerdi, 1380/2001, p. 259; Khomeini, 1408 H.Q., p. 623). With this explanation, it is clear that partnership contracts are different from time share because in partnership, the subject of dealing is the commonage of profits not the tangible property itself. Here, joint ownership is the common shares, i.e. every individual has the right to share in all components of the property and has the right to use it, but each partner's use depends on the allowance of all other partners. Thus, ownership is not absolute because it puts the Dominance Principle in contrast to No Loss profit (Mohagheq Damad, 1383/2005, p. 131). The loss might be done by one of the partners and the government defends No Loss principle, but the joint ownership does exist unless it is transferred to others through one of legal means.

B) Sale contracts (*aqd beie*) are the most important, obvious and common type of contrasts in society. The word *Beie* (sale) in Persian is a paradoxical one which means both selling and buying (Ibn Manzour, ?, p. 23). However, due to its great usage among people, it conveys a sense of selling. Jurisprudents do not disagree about the nature of sale; however, they disagree about its instances (e.g. some regard goodwill as sale and some do not) (Shariati, 1387/2008, p. 31). Jurisprudents have provided different definitions of sale. For example, Shahid Sani in *Macāseb*, while providing different definitions like exchange of property for property (Ansari, ?, p. 7) and the ownership of property in return of property or the ownership of property in return of a specified substitute (Civil Law Article No. 338), asserts that the sale contract is the promise and acceptance of alienating property to another person in return of a specified substitute (1365/1986, p. 275). Similarly, Najafi (1362/1983, p. 205) provides different definitions of the word and proposes that the aim of Islamic jurisprudents in providing these definitions of sale contract is to reach a compromise about its nature and not providing a logical definition.

Different types of sale in reference to time

Three different types of sale exist in accordance with time:

The sale of the tangible property (*beie eini*) in a non-temporary manner (the permanent ownership is alienated to another person. This kind of sale has no religious or jurisprudential problem. According to this assumption, sale is unconditioned with respect to permanence and not with respect to the property itself and cannot be conditioned with respect to a specified time.

The second type of sale is standing sale (*beie ayān*) whose determination needs time (e.g. the one-month selling of sheep's milk or the one-year selling of the fruit of a garden). In this type of sale, time is related to the owned not to the ownership. In other words, the owned property is obliged to time, so it does not mean temporary ownership. This kind of sale is accepted in jurisprudence too (Tabatabai Yazdi, ?, p. 66).

Finally, there is temporary sale (*beie movaqat*) in which the tangible property is sold to the other person temporarily. Nearly all ulema and jurisprudents regard this kind of sale as corrupt and invalid (Tabatabai Yazdi, ?, p. 66; Khoui, 1371/1982, p. 276).

Reasons of the opponents of temporary sale

Time share is not a common type of sale, rather it is a particular agreement and contract which includes timetabled alienation of property and, for this reason, many lawmakers and jurisprudents do not regard it as a common type of sale (Shariati, 1388/2009). The opponents of temporary sale have two arguments against it: its contrast to both logic and religion (temporary ownership is an unwise and unacceptable issue).

In order to answer this problem, it should be stated that if this kind of sale exists in the society, this means that it is logical and acceptable and there is no documented reason to reject it. Secondly, it can be stated that sale is a conventional issue and it could not be regarded as unwise or unreligious unless

there is a rational or religious reason for its rejection, (which is not so). It is especially the case because there are similar instances of it in the jurisprudence.

Such kind of sale is not common in jurisprudence because it is not accepted according to convention. According to many jurists, the term sale lacks any religious or jurisprudential facts in it and has kept its conventional meaning (Ansari, 1378/1389, p. 79). Sale has a conventional meaning and Islam has no factual entry about it. As a result, in order to interpret it, it is necessary to refer to convention. The reference for understanding these concepts and their instances is convention (Ghadiri, ?, p. 18, 200).

There is no imaginable meaning of temporary sale, because, for example, the seller alienates his house to another person permanently and unconditionally (Khoui, 1371/1982, p. 274). What is issued in sale is absolute regarding time. Many contemporary jurists do not consider temporary sale (time share) as a common sale.

Overall, it can be stated that conventionally, during a sale, the tangible property is alienated to a second person in return of a substitute, i.e. the relationship between the first owner and the property is cut and a new relationship is established between the second person and the property. In other words, the permanent alienation of the property is one of the necessary and distinctive features of sale, and as a result, temporary alienation cannot be regarded as an instance of sale (Shariati, 1388/2009; Tabatabai, 1392/2013, p.27). It should be noted that if this kind of sale is accepted conventionally some day, there will be no religious reason to reject it. The acceptance of it by some jurists may be for this reason (Hoseini, 1387/2009, p. 13).

Conditioned Sale (*beie shart*)

Although temporary sale is not considered as an instance of sale according to many jurists, it is necessary to mention that conditioned sale is a case which is allowed by Islam. Temporary ownership is a kind of ownership which is created in conditioned sale. In conditioned sale, the parties agree that the seller must alienate the property or its price to another person in a specified time during which he can revoke the contract and return the sale. As well as the common reasoning of keeping the promise, there are some Hadis which verify the validity of this kind of sale (Hor Amoli, 1414 H.Q., P. 255).

The idea of most jurists is that if the contract is evoked during this time, there is some waste in the customer's property and the profits of the purchased property belong to the customer too (Sheikh Ansari, 1378/1389, p. 131). This kind of trade can be an instance of temporary ownership which has no religious forbidding too (Afzali, 1388/2009, p. 18).

Commonage sale with the condition of *Mohāyāt* (*beie moshā*)

Mohāyāt is discussed in jurisprudential and civil law books. Before examining this topic, it is necessary to clarify the meaning of commonage sale and *mohāyāt*. Commonage or joint sale is one in which there are two or more owners and one person is not the owner of the tangible property (Langroudi, 1376/1987, p. 260; Tabatabai, 1392/2013, p. 23). The profits of the joint property are divided in two ways: 1) division to the number of parts (e.g. half devoted to one and the other half to the second person); 2) division to the time of profiting (one month for one person and the second month for the second person). Both ways are common among people, for example in the division of water in a subterranean. This kind of dividing the profits of joint property is called *mohāyāt*. Shahid Sani asserts that, "*mohāyāt* is the division of the profits of joint property according to parts or times" (*Rouzat-Al-Behieh*, p. 250). In other words, it is the division of all the profits gained from condominium or commonage or joint property (Katouzian, 1379/2000, p. 74; Civil Law Article No. 587).

Some jurists have accepted the validity of *mohāyāt* and regard it as irrevocable. They argue that it is not necessary that *mohāyāt* be issued as reconciliation or another form of contract (Katouzian, ?, p. 75). However, others regard it as an allowed contract. Imam Khomeini asserts that, "there is no disagreement among ulema about *mohāyāt*, though, there are some disputes about its juristic nature (Khomeini, ?, p. 600).

***Mohāyāt* in partnership**

In order to solve the problem of time share, some have proposed that the best solution is *mohāyāt* in partnership, i.e. the profits are divided according to part or time partitioning with the maintenance of profiting from the commonage impacts and tangible property (Tabatabai, 1392/2013, p. 24; *Fatvā Booklet* of the Judicature Organization).

Because of the nature of sale contract (in its absolute form), it cannot be used to solve the time share problem. In order to solve this problem, there are some ways in jurisprudence, one of which is sale with the divesting of benefits in a partial way. Some of its instances are presented below:

Sale with the condition of the remaining of the ownership for the owner

This happens in leasing contracts which have created some problem and as a result, people have turned to another form of it called hire-purchase (Langroudi, 1357/1379, p.514; Safai, 1384/2005, p. 66). This is like when you sell a rented house, which is not in contrast with the leasing contract and the buyer will not benefit from the purchased house until the end of the lease contract. This is not illegal (Tabatabai yazdi, 1373/1984, p. 527).

Sale with the condition of sale

According to jurists and lawyers, if the buyer makes the condition to sell the property immediately, it is not acceptable. However, if he makes the condition to sell it to a customer after a logical time (e.g. one year), the condition is acceptable and the sale is valid (Langroudi, 1357/1379, p. 526).

Sale with the condition of not selling it in a specified time or to a specified person

This kind of contract is valid unless there is a condition of not selling it to anybody (Langroudi, 1357/1379, p. 538).

Sale of ages (*beie senain*)

In Islamic jurisprudence and law, sale of ages is invalid. This is the case when a person sells something (e.g. the crop of date trees) for more than one year. In this case, because the purchased property is not identified, it is invalid or if it is specified that the property is sold for one year and after that, it must be returned to the original owners, this is invalid too (Ansari, 1378/1989, p. 504).

Commonage sale with the condition of the periodic possession of the property

In this case, after the issuing of the contract, the two parties possess the property intermittently (the way that the heirs possess the late person's properties). In this case, the property is not alienated (Ansari, 1376/1989, p. 724).

Exchange contract (*aqd moāveze*)

This kind of contract does not have the principles of the sale (Civil Law Article No. 465). Rather, here a person transfers some property to another person and, in return, receives something without considering its value and price (Civil Law Article No. 464). As the principles of sale do not hold for this contract, it is possible to include a kind of time ownership while issuing this contract (Afzali, 1388/2009, p. 25).

Time reconciliation and sale (*solh va beie zamāni*)

Reconciliation means compromise and agreement. Most jurists regard it as a contract to terminate dispute and quarrel (*Masalek*, p. 259; *Hadaegh-Al-Nazerh*, p. 83; *Ghavaed Feqhieh Bojnourdi*, p. 10). An independent view about reconciliation contract has caused it to be used as a way to expand different types of contracts and to establish the dominance of free will (reconciliation contract is a wider framework for other contracts) (Katouzian, ?, p. 289). As a result, jurists provide the possibility of devising a new contract whenever they encounter a new problem. For example, in contracts, it is not possible to pay the price through salary, however, it can be done through a reconciliation contract (Tabatabai, 1403 H.Q., p63).

Some ulema have accepted the validity of insurance contracts based on reconciliation (Rouhani, ?, p. 72). Some other, like Imam Khomeini have regarded it as an independent contract (?, p. 608). In some manuscripts, there are some contracts which are not compatible with any of the accepted contracts; however, they can be allowed based on reconciliation contract (Bojnourdi, 1377/1988, p. 11).

The relationship between reconciliation and time share

Is it possible to issue a time share contract according to a reconciliation contract?

Reconciliation is of two types: 1) reconciliation for the purpose of terminating a dispute (which is agreed upon by all ulema); and 2) primary reconciliation (which is the point here). The latter is disagreed by jurisprudents. Some have proved primary reconciliation based on Holy Quran's Verses not related to it (Khansari, 1355/1376, p. 392; Ardabili, 1305/1916, p. 461; Hor Amoli, 1414 H.Q., p. 429; Kolehini, 1411 H.Q., p. 158).

There is no holistic reason to reject time share and its being not common is proposed as the most important reason for its rejection. Therefore, if it becomes common in the society, there will be no reason to reject it according to jurisprudents.

The status of time share among indefinite contracts

Indefinite contracts are those which have not a particular form and title in the law. There are a number of them and their conditions and impacts are determined according to the general principles of contracts and the principle of will dominance. Some examples include the contracts related to the publication of books, transfer of goodwill, opening an account in a bank (Katouzian, 1389, 2010, p. 1).

From what was presented, it can be inferred that except in reconciliation, there is no way to interpret time share in other contracts or it will, at least, encounter some problems. Can this problem be solved through indefinite contracts? Is it possible to find a way to interpret time share in accordance with the current conventional and rational contracts? In other words, the question is that whether there must be a religious text for legitimizing a contract or its rationality suffices? Most jurisprudents believe in the limitedness of contracts and deals. Most ulema like Fazel Lankarani, Sistani, Nouri Hamedani, Montazeri, Makarem Rouhani and Mousavi Ardabili have allowed the issuance of time share in the form of a new and independent contract (Emami, 1389/2010, p. 51; Afzali, 1388/2009, p. 29).

Regarding indefinite contracts, some lawyers have concerns about the problem that if people are able to make any kind of contract and transfer a property to others, this will cause a disorder and may create problems for lawyers and people. However, considering the principle of free will and the Civil Law Article 10, there is no problem with these contracts.

Convention and its effect on new problems

Although the issue of convention (regarding its importance and dimensions) needs a separate discussion, it is necessary to discuss it briefly here as it was mentioned in this paper several times.

It must be clarified that convention is older than any other law in this world and all laws have roots in the conventions of different societies. Literally, convention (*Orf*) means manner and habit, tranquility and comfort, and what is approved by wisdom or religion. It has been used twice in Quran and the word *marouf* (well-known or famous) has been used 39 times, of which the majority means something acceptable and approved by people (Tabasi, ?, p. 115). According to Alame Tabatabai (?, p. 397), convention includes all the accepted and praised customs which are common among wise people. In most Sunni and Shiite jurisprudential texts (like *Shrae-Al Eslam*; *Alroze-Al Behieh*; *Javaher-Al Kanam*; *Alorvat-Al Vosqa*; *Kefayat-Al Osoul*; *Osoul-Al Amah fi Feghh-al Moqaren*), the issue of convention has been discussed.

Although Islam has no specified definition for convention and has assigned its definition to itself (*Anvar-Al Hedayah*, p. 106), a number of definitions have been proposed by some of the ulema, which will be reviewed here. Ghazali defines convention as everything which is accepted by people with respect to rationality and is praised by wise people (*Majalat-Al Hoqouq*, p. 2). Hakim provides the following as the best definition among ulema, "practical or spoken style and manner which are common among the majority of the members of a group (Hakim, 1385/2006, p.405). In the juristic books, convention is defined

as everything which is common among people or any kind of manner or parlance which has spread among people, both pleasant and unpleasant (Jafari Langroudi, 1380/2001, p. 50).

According to Shiite jurists, convention is amongst the proofs to prove the religious rules and not a main source or an independent proof by itself. In addition, convention is acceptable only when it is issued by sacred Imams (*Ahl-al Beit*) (Hakim, 1385/2006, p. 405; Khomeini, ?, p. 112). Khomeini has proposed the convention of the wise as one of the proofs for accepting a qualified Mojtaba (clergyman), i.e. the imitation of an ignorant from a knowledgeable one and referring to an expert.

The Sunni ulema, especially the *Hanafi* communion, consider convention as an argument and one of the best ways to deal with the new changes in society and the world (*Osool-Al Amah*). Qazi Abu-Yasef believes that "whenever the religious text is based on convention and custom, it will change if that convention changes" (Shatebi, 1997, p. 283). These ideas have been rejected in *Osool-Al Feqh-Al Moghareh* (Hakim, 1385/2006, p. 310).

Imam Khomeini, in contacting with Ayatollah Golpayegani, regards parliament as the representative of convention by stating, "I have received a telegraph expressing your concerns about the authorities given to the parliament. These authorities are based on the conventions and the representatives are the symbols of convention (*Sahife Emam*, V. 15, p. 310). The elements of convention are a specific action, the recursion of that action by a particular group, the majorities' customs, and its voluntariness. In addition, its performance is not registered in any law, it has roots in good thoughts, and qualified people have not talked against it (Jafari Langroudi, 1377/1998, p. 50).

Convention has several types including common and particular, oral and practical, valid and corrupt, juristic and civil conventions, etc. The convention that is utilized in jurisprudence and law as the reference is one which has origin and permanence and the majority of people confirm it.

Mohaqeq Naini asserts that, convention is rooted in three things: An authoritative ruler, last prophets, and what is originating from the nature and constitution of people. He concludes that, "if we are able to approve God's acceptance about them, we can accept them all (Kazemi Khorasani, ?, p. 192). Nevertheless, some ulema have rejected the conventions remained from an authoritative ruler but accept the others.

In many cases, the solution of some problems is assigned to convention, for example in the following cases of *mo'atāt* (deals without any contracts), unauthorized deals (*aqd fozooli*) without the permission of the owner or his representative), unauthorized uses of others' properties (*Haq-al mareh*), dedication of movable properties, scalability of the goods, etc.

Ayatollah Hakim identifies three positions for convention in the Shiite principles: 1) it is possible to discover religious rules from the conventions where there is no direct religious text (like unauthorized contracts and interpellations); 2) cases which have been assigned to convention by Islam (e.g. in the case of *lafze said va ānā* which means ground and dishes); and 3) cases where the discovery of *Motekalemin's* (the speakers') intentions has been assigned to convention (cases wherein the speaker whether the religion or not, has an absolute statement) (Hakim, ?, p. 405).

The last question to be asked is that what happens to the religious rule if the convention changes? The change in the convention is something which is rationally acceptable and it is accepted by ulema too. In this regard, Shahid Aval contends that, "in the time of the holy Saints, the dowry was paid at the time of marriage. Therefore, when there was a dispute about its payment, if the man claimed that he had paid the dowry, it was accepted from him; however, gradually with the change of the convention, men did not pay the dowry at the time of marriage. As a result, the religious rule changed and woman's claim became superior (1378/1999, p. 66). This shows that the convention changes and the religious rule can change in accordance with it. Likely, Shahid Sani has asserted that, "it is allowed to change the religious rules and principles based on the changes in convention" (?, p. 151). As another example, insurance was once not accepted as a contract and issued as a reconciliation contract, but now it is an independent contract according to ulema as was mentioned earlier. In answering a question about chess, Imam Khomeini asserted that, "based on the individual's recognition, if chess is not regarded as a gambling tool in convention, there is no problem in its use as a sport (this is correct about every other tool which is or is not considered as a tool of gambling in convention) (*Sahife Imam*, 1378/1999, p. 121).

CONCLUSION

1. Time share is a new contract in which the ownership of the tangible property, its profits or both (usufruct) is alienated to another person who has the right to take advantage of it in a particular period of time.
2. In order to transfer the profits, the contract can be issued in form of a leasing, reconciliation, or partnership contract.
3. In order to transfer the tangible property and its profits in the form of definite contracts, there are still some jurisprudential as well as civil law problems; however, it can be issued in form of a commonage sale with the condition of *mohāyāt* and reconciliation.
4. Time ownership is not against religion or convention and does not involve any illegal problem (it is not against the society's conventions and moralities); rather, it has many advantages for both parties and can meet the society's needs.
5. The arguments of the opponents of time share and time ownership are not complete and can be questioned. However, the ontological and epistemological arguments of the proponents are not strong enough.
6. The expansion of these contracts and the change of convention are very effective in getting a clear religious rule from jurists because, if such a contract is accepted conventionally, there is no reason to reject it according to many jurists.
7. Time share is mostly related to immovable properties; therefore, it is necessary to change and update the current registration laws to solve the present problems.
8. Until reaching a compromise about solving the civil law and jurisprudential problems related to time share, it is recommended that reconciliation be used to provide security for both parties.

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